

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.19513 of 2007

Date: 13th September, 2007

Between :-

M/s.A.P.Bio Sciences

Rep. By its proprietor

Dr.T.siva Sankara Rao

Petitioner

..

And

The Commissioner & Director of

Agriculture, Andhra Pradesh,

Gunfoundry, Hyderabad

Respondent

..

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.19513 of 2007

ORDER:-

The matter is coming up for Admission.

2. Heard Sri Ravindra Babu, the learned Counsel representing the writ petitioner and the learned Government Pleader for Agriculture.

3. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent in interfering with the business of the licensed dealers of the petitioner by issuing Memo. No.PPII(1)2085/2005, dt.21-1-2006, as being illegal, arbitrary, unlawful and unconstitutional and without jurisdiction and further direct the respondent not to interfere in any manner with the manufacture, sale and distribution of the petitioner's Bio-products including from the Licensed Premises of the dealers/stockists under the Insecticides Act, 1968 and the Fertilizers Control (Order) Act, 1985 and thereby pass such other suitable orders.

4. It is stated that the petitioner is in the business of manufacturing, sale and supply of various products which are popularly referred to and called as "Bio-products" as the said products are manufactured without usage of any toxic chemicals unlike the regular pesticides and

insecticides and the said products are naturally derived and are used as crop stimulants and growth promoters also and the products enrich the soil and ensure the protection of the plants/crops from viral, bacteria, fungus and other infections. It is also stated that the Bio-products are soil and environmental friendly and leave no chemical, toxic or synthetic residues and also there is an increasing global trend for promoting the use of the products over insecticides and Fertilizers as the usage of pesticides and fertilizers is detrimental and damaging in the longer run. It is further stated that the petitioner has been engaged the manufacture and sale of Bio-products for the past several years and the Bio-products are increasingly, albeit slowly, gaining acceptance in India amongst the knowing and knowledgeable agriculturists and the said products are also being recommended and encouraged by the agricultural and crop analysts and scientists. It is also further stated that while the petitioner products are being supplied and sold throughout the country without any hindrance of approvals and in the State of Andhra Pradesh the respondent is insisting that the manufacturers and traders must obtain marketing permission from the respondent under the Insecticides Act, 1968 for the purpose of marketing and selling such products in Andhra Pradesh. It is also further stated that

the Insecticides Act, 1968 (hereinafter referred to as “the Act”) provides for the regulation of manufacturing, distribution and sale of Insecticides, Section 3(e) defines Insecticides as follows:

Section 3(e) ‘Insecticides’ means:-

- i) any substance specified in the schedule;*
or
- ii) such other substances (including fungicides and weed cines) as the Central Government may, after consultation with the board, by notification in the Official Gazette, include the Schedule from time to time; or*
- iii) any preparation containing any one or more of such substances.*

Thus, the Act would be applicable only in respect of any substance specified in the Schedule to the Enactment or such other substance as may be included in the schedule by notification in the Gazette from time to time or a compound comprising of any of such substance. It is also further stated that the Bio-products manufactured and offered for sale by the petitioner have not been included in the schedule to the Act and do not comprise of any of the substance mentioned in the schedule and the Bio-products are therefore not insecticides for the purpose of the Act. It is also stated that though the regulatory regime of the Act would have no application to the products of the

petitioner, since the obtaining of marketing permission was providing for an administrative control and supervision of such products, the petitioner has been obtaining marketing permissions from transfer in respect of the said Bio-products and the said marketing permissions are valid till today, while some of them are pending for renewal. It is also stated that the said marketing permissions were being granted to the petitioner's Bio-products, which are not covered under the Insecticides Act, 1968 and Fertilizer Control (Order) 1985 and only after it is recommended by the High Legal Technical Committee duly constituted by the respondent. It is further stated that the respondent thereafter issued proceeding Memo.No.PPII(1)2085/2005, dt.21-1-2006 *inter alia* stating that since Bio-products are not covered by the Insecticides Act, 1968 or the Fertilizer Control (Order) Act, 1985, the stocking, storage or the sale of the said products from the licensed premises will not be permitted and the units which already have marketing permission were instructed to liquidate the existing stocks within 45 days i.e., on or before 10-3-2006. It is also further stated that the action of the respondent in issuing the Memo and the Letter was wholly irrational and unconstitutional. It is also stated that if the respondent were to treat and consider that the Bio-products are not

‘substances’ under the Act and since the sale of the products is not restricted or prohibited under any law, the respondent ought not to have prohibited the sale of the Bio-products from any premises including the licensed Insecticides/Fertilizers dealers premises, like the petitioner herein. It is also further stated that the authority for granting permission for manufacture or sale which would include the authority for prohibiting such sale is available to the respondent only in respect of insecticides specified in the schedule and once it is accepted by the respondent that the Bio-products are not insecticides for the purpose of the Act, no order restricting the sale could be passed by the respondent and the same is devoid of any authority, power or jurisdiction. It is also further stated that the petitioner and other manufacturers of Bio-products have been marketing the products in the State of Andhra Pradesh for the past several years and the said products have been marketed with the consent, approval and knowledge of the respondents through the licensed Insecticides/Seed/Fertilizers Dealers. It is further stated that there have been no instances of any loss, inconvenience or any impropriety being caused or occasioned on account of the petitioner’s products being sold by the licensed pesticides and

fertilizer/stock/dealers. It is stated that the market segment to which the petitioner's Bio-products cater to, is essentially agriculture and the agriculturists. It is also stated that most of the petitioner's agents and stockists also are agents and stockists of various insecticides and fertilizers and this provides convenience and facility for various agriculturists in the State of Andhra Pradesh, who are able to procure all their requirements from one source. It is further stated that there is no prohibition on stockists and dealers who are granted a License under Section 13 of the Insecticides Act, 1968 read with Rule 10 of the Insecticides Rules, 1971 from stocking and storing the petitioner's products. It is also stated that the usual condition that is insisted upon by the respondent or his Subordinate Officers while granting such license is that the stockists of Insecticides and Fertilizers should not store any food and edible items. It is also further stated that many of the dealers are thus selling products such as agricultural implements and other products used by the Agriculturists as the same is not prohibited under Law or by the respondent and the petitioner and its dealers are also similarly entitled to sell Bio-products as they do not, in any manner affect the sale of insecticides/fertilizers or any of the conditions of license. Several other facts had been stated relating to the disposal of the prior Writ Petitions. It

is also further stated that despite the contentions of the respondents being rejected by this Hon'ble Court, the respondent has now issued proceedings No.PPIL(1)2085/2005, dt.21-1-2006 *inter alia* instructing all the Joint Directors of Agriculture and the Insecticides Inspectors of the State to initiate action against the Dealers, who were stocking such Bio-products and the said instructions require the Joint Directors of Agriculture and the Insecticides Inspectors of the State to issue notice for cancellation of Dealers License and thereafter cancel the License. It is also further stated that the said proceedings are wholly irrational and violative of the provisions of Article 14 of the Constitution of India. It is also stated that the said proceedings are aimed at defeating and setting at naught the directions issued by this Court in W.P.No.8207/2006 and Batch and are therefore void and illegal. It is also stated that the impugned proceedings violate the rights of the petitioner for carrying on their business without any unreasonable restrictions. It is further stated that the impugned action thus infringes the petitioner's fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. In such circumstances, the petitioner approached this Court praying for the relief as specified supra.

5. Reliance also was placed on the decisions made by this Court in W.P.No.8207/2006 & Batch and also W.P.No.17508/2007 & Batch. It is not in serious controversy that in similar cases, the Writ Petitions are disposed of with certain directions. It is also stated that these matters were not carried by way of Writ Appeals. This Court also disposed of Writ Petition Nos.19226/2007, 19247/2007, 19265/2007, 19285/2007 and 19286/2007 on 11-09-2007 in the light of the views expressed by this Court in the aforesaid Batch cases referred to supra. In view of the same, the Writ Petition is disposed of with the following directions:-

- (a) *it shall be open to the petitioners to submit a sample of 5 kg. of each product dealt with by them, together with the corresponding literature, throwing light upon the manufacturing process as well as the contents thereof, to the respondent herein;*
- (b) *within two (2) weeks from the date of submission of the samples and the literature by the petitioners, the respondent shall get the same analysed in a suitable laboratory and intimate the result of the analysis, to the petitioners;*
- (c) *in case, the analysis reveals that the products dealt with by the petitioners answer the description of the products mentioned in Schedule-III to the Control Order, the petitioners shall be entitled to deal with the products, only after obtaining licence under the Control Order.*

On the other hand, if the result is found otherwise, the petitioners shall not be subjected to the regime under the Control Order or the Act; and

- (d) if the respondent fails to intimate the result of the analysis within two (2) weeks from the date of submission of the samples and the literature, it shall be open to the petitioners to deal with the products, notwithstanding the impugned letter and the memo, as long as the products are not insecticides or chemicals.*

No order as to costs.

Justice P.S.Narayana

13th September, 2007

smr